

Appl. No. 10/797,074
Amendment dated: January 5, 2006
Reply to OA of: October 5, 2005

REMARKS

This is in response to the Official Action of October 5, 2005.

Applicants would like to begin by noting that a certified copy of the priority document for claiming foreign priority under 35 U.S.C. §119(a)-(d) or (f) is enclosed herewith. Accordingly, Applicants respectfully request that the Examiner acknowledge in the next Official Action that certified copies of the priority documents have been received.

Applicants note with appreciation the indication of allowable subject matter at page 5 of the outstanding Official Action. Specifically, the Official Action states that claims 3, 8 and 11 would be allowable if rewritten in independent form including all the limitations of the base claim including any intervening claims. However, Applicants respectfully submit that the claims as currently presented are patentably distinct from the prior art references of record and therefore are clearly allowable.

Applicants have amended the claims in order to more precisely define the scope of the present invention taking into consideration the outstanding Official Action. Specifically, claims 1 and 10 have been amended to recite that the connecting element is a hollow cylinder with an open lower end. This limitation was previously presented in claim 5, but has since been deleted from claim 5. Applicants now respectfully submit that all claims currently pending in the present application are in full compliance with the requirements of 35 U.S.C. §112 and are clearly patentable over the references of record.

The rejection of claims 1 and 6 under 35 U.S.C. §102(b) as being anticipated by Lindsay, the rejection of claims 1, 2, 5 and 6 under 35 U.S.C. §102(b) as being anticipated by Kazienko and the rejection of claim 10 under 35 U.S.C. §102(b) as being anticipated by Abbott have each been carefully considered but are most respectfully traversed in light of the amendments to the claims and the following comments.

Applicants wish to direct the Examiner's attention to MPEP § 2131 which states that to anticipate a claim, the reference must teach every element of the claim.

Appl. No. 10/797,074
Amendment dated: January 5, 2006
Reply to OA of: October 5, 2005

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed.Cir. 1990).

First, with respect to the rejection of claims 1 and 6 as being anticipated by Lindsay, Applicants note that claim 1 has been amended to recite an additional element that previously appeared in claim 5, i.e., that the connecting element is a hollow cylinder with an open lower end. As the Official Action implicitly acknowledges that Lindsay does not disclose this element of the claim, Applicants respectfully request that the rejection be withdrawn.

With respect to the rejection of claim 10 as being anticipated by Abbott, Applicants note that claim 10 has been amended to recite that the connecting element is a hollow cylinder with an open lower end. Abbott clearly fails to disclose this element of the presently amended claims. In fact, there appears to be no connecting element disclosed in Abbott whatsoever. The Official Action impliedly acknowledges as such by failing to point out what part of Abbott discloses a connecting element. Abbott merely discloses a rod F passing through a gland a³ with a bush having scraper arms H at the squared end of the rod F. No hollow cylinder connecting element with an open lower end is disclosed and therefore Abbott clearly fails to disclose every element of the presently claimed invention. Accordingly, Applicants respectfully request that this rejection be withdrawn.

With respect to the rejection of claims 1, 2, 5 and 6 as being anticipated by Kazienko, the Official Action makes no formal statement as to what portion of the prior art reference discloses a connecting element. It appears that the Official Action

interprets reference numeral 28 as a connecting element. Kazienko discloses at page 2, left-hand column, lines 2-12 that a sleeve 28 is disposed on the upper portion a rod-like upright 27. Kazienko further discloses that the upper portion of the upright 27 is non-circular in cross-section and the sleeve has a similar interior form for a portion of the sleeve is slidably mounted upon the upright 27. The non-circular shape of the upright 27 and the sleeve 28 is presumably selected so that when engaged, the sleeve and the upright will be forced to rotate together due to the squared edges of each element coming into contact. If the two elements were circular, then turning one element would not cause the second element to turn with the first element. Therefore, it is clear the Kazienko requires a non-circular sleeve 28. To the contrary, the presently amended claim 1 specifically recites a hollow cylinder connecting device, and therefore the present invention and the invention disclosed in Kazienko are patentably distinct.

Further, claim 5 of the present invention clearly recites that the flexible element has its upper end disposed in the cavity of the connecting element. Kazienko, on other hand, discloses a spring that is completely below and outside of the sleeve as evidenced by Figures 1 and 2. As a result, Kazienko is further distinguished from the presently claimed invention.

Because Kazienko clearly fails to disclose multiple elements of the presently amended claims, the prior art reference is incapable of establishing a proper §102 rejection according to the guidelines set forth in MPEP §2131. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The rejection of claims 2 and 5 under 35 U.S.C. §103(a) as being unpatentable over Lindsay in view of Kazienko, the rejection of claim 4 under 35 U.S.C. §103(a) as being unpatentable over Lindsay in view of Rice, the rejection of claim 7 under 35 U.S.C. §103(a) as being unpatentable over Lindsay, the rejection of claim 9 under 35 U.S.C. §103(a) as being unpatentable over Lindsay or Kazienko in view of Feagin, Blackman or Kelley and the rejection of claim 12 under 35 U.S.C. §103(a) as being unpatentable over Abbott in view of Feagin, Blackman or Kelley have each been

Appl. No. 10/797,074
Amendment dated: January 5, 2006
Reply to OA of: October 5, 2005

carefully considered but are most respectfully traversed in light of the amendments to the claims and the following comments.

Applicants wish to direct the Examiner's attention to the basic requirements of a prima facie case of obviousness as set forth in the MPEP § 2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Section 2143.03 states that all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants also most respectfully direct the Examiner's attention to MPEP § 2144.08 (page 2100-114) wherein it is stated that Office personnel should consider all rebuttal argument and evidence presented by applicant and the citation of *In re Soni* for error in not considering evidence presented in the specification.

As discussed above in detail, none of the primary references (i.e., Lindsay, Kazienko or Abbott) disclose a hollow cylinder connecting element with an open lower end as claimed in independent claims 1 and 10. The Official Action urges, with respect to claim 5, that the use of a hollow connecting element as taught by Kazienko in the structure of Lindsay would have been obvious to one of ordinary skill in the art. Applicants specifically traverse this statement.

First, as discussed in detail above, the present claims recite a hollow cylinder connecting element, while Kazienko clearly discloses a non-circular sleeve. As discussed above, this non-circular configuration is specifically selected by Kazienko so that the squared edges of the upright 27 and the sleeve 28 come into contact and force simultaneous rotation. Therefore, a combination of the sleeve disclosed in Kazienko and the device disclosed in Lindsay as suggested in the Official Action does disclose the invention as presently claimed.

Further, it is clear that one would not be motivated to alter the non-circular connecting device of Kazienko into a cylindrical connecting device as claimed in the present invention because doing so would mean that the sleeve 28 and the upright 27 would not engage and cause simultaneous rotation. The configuration of Kazienko teaches away from modifying the sleeve 28 because doing so would frustrate the objective of the invention (i.e., causing the spreading elements 26 to rotate about the screen 17).

Therefore, for all the reasons stated above, Applicants respectfully assert that it would not have been obvious to combine the non-circular sleeve of Kazienko with the device of Lindsay to form the fluid filtering device claimed in the present application. Accordingly, Applicants submit that a proper §103 rejection has not been established according to the guidelines set forth in MPEP §2143 and request that the rejections therefore be withdrawn.

With respect to claims 2, 4, 7, 9 and 12, Applicants note that each of these claims depend from either claims 1 or 10. As discussed above, claims 1 and 10 are clearly patentable over the references of record. Neither Lindsay, Kazienko nor Abbott disclose a connecting element that is a hollow cylinder with an open lower end as recited in the presently amended claims. Further, none of the secondary references cited in the §103 rejections remedy this deficiency. Therefore, as claims depending from allowable independent claims, Applicants respectfully request that the §103 rejections of claims 2, 4, 5, 7, 9 and 12 be withdrawn.

Appl. No. 10/797,074
Amendment dated: January 5, 2006
Reply to OA of: October 5, 2005

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,

BACON & THOMAS, PLLC

By: 
Scott A. Brairton
Registration No. 55,020

625 Slaters Lane, 4th Fl.
Alexandria, Virginia 22314
Phone: (703) 683-0500
Facsimile: (703) 683-1080

SAB/cmd
A01.wpd

January 5, 2006